

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 564 of 2003

With

CIVIL APPLICATION NO.1570 OF 2003

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

UNITED INDIA INSURANCE CO LTD.

Versus

KANTABEN KANUBHAI PARMAR

Appearance:

1. First Appeal No. 564 of 2003
MR PV NANA VATI for Petitioner No. 1
MR VIBHUTI NANA VATI for Petitioner No. 1
MR MTM HAKIM for Respondent No. 1-6
..... for Respondent No. 7-8
-

CORAM : MR.JUSTICE N.G.NANDI
and

Date of decision: 08/05/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. Mr. M.T.M. Hakim, learned advocate for the respondents claimants has placed on record affidavit sworn-in by Sarojben Maganbhai Padhiyar, Incharge Acharya of Shri Vithal Kanya Kelvani Mandal, Nadiad, along with copy of Resolution dated 15-3-2001 and true copies of the salary sheet for the months of July, August and September 1999 (till 20th September 1999) pertaining to the deceased, in order to suggest the income of the deceased prior to the date of accident. Mr. P.V. Nanavati, learned advocate for the appellant Insurance Company has fairly stated that, the affidavit along with copy of resolution dated 15-3-2001 and copy of the salary sheets for the months of July, August and September 1999 be taken on record and be read and considered for the purpose of deciding the appeal.

In view of the above, the affidavit, copy of the resolution dated 15-3-2001 and salary sheets for the months of July, August and September 1999 are taken on record.

2. Heard. Perused the R & P. Admit. Mr. MTM Hakim waives service and accepts notice of admission on behalf of respondents claimants.

3. On the request of learned advocate appearing for the parties, this appeal is taken up today for final hearing and disposal.

4. This appeal under section 173 of the Motor Vehicles Act is directed against the judgment & award in M.A.C. Petition No. 2307 of 1999 decided on 28-8-2002 by M.A.C. Tribunal (A-III) at Nadiad, district Kheda, awarding compensation of Rs.12,36,600/- with 9 % interest from the date of application till realisation of the amount. In the accident which had occurred on 20-9-1999 at 8.30 p.m. on Nadiad Petlad Road, near village Piplata Kanubhai Bhagwanbhai who was going to Nadiad from Kariavi on his scooter bearing registration No. GJ 7AB 5038 met with an accident with auto rickshaw bearing No. GJ 7Y 8971. The Claims Tribunal appreciating the evidence on record and having regard to the age of the deceased, awarded amount of compensation as aforesaid which is assailed in the present appeal by the appellant Insurance

Company.

5. We have perused the R & P of the Claims Tribunal and also the affidavit sworn-in by Sarojben Maganbhai Padhiyar, Incharge Acharya of Shri. Vithal Kanya KelvaniMandal, Nadiad and the salary sheets for the month of July, August and September 1999 along with the resolution dated 15-3-2001 produced today as observed above.

6. The Claims Tribunal considering the oral as well as documentary evidence found the income of the deceased at the time of accident to be Rs.4878-00 per month as he was serving as Junior Clerk in Shri Vithal Kanya Kelvani Mandal, Nadiad. In the affidavit deponent Sarojben Maganbhai has stated that, she was appointed as Incharge Acharya of VKV on 15-3-2001. She has produced copy of the resolution dated 15-3-2001 (Annx.A) suggesting her appointment in the said Kelvani Mandal. It is further testified by her that, she deposed before M.A.C. Tribunal (Auxi.III) Nadiad in M.A.C. Petition No. 2307 of 1999 giving details of particulars of salary and income of deceased Shri. Kanubhai Bhagwanbhai who was working as Junior Clerk in Shri. Vithal Kanya Kelvani Mandal, Nadiad, since 1992, and further testified that she is producing true & authenticated copies of the pay register of her school to suggest the income of the deceased on the date of accident. Perusal of the pay register for the month of July 1999 suggests the name of deceased Kanubhai Bhagwanbhai Parmar at Sr.No. 9 (Annexure-B) suggesting his income at Rs.4878-00 for the month of August 1999 as his carry home salary. Same amount is the carry home salary for the month of August 1999. Salary register for the month of September 1999 suggests salary paid in respect of service rendered by the deceased Kanubhai Bahgwanbhai Parmar till 20-9-1999 as the accident took place on 20-9-1999. It is suggested from the copies of salary register for the month of July, August and September 1999 that Rs.4878-00 per month was the carry home salary of the deceased.

7. The accident took place on 20-9-1999. As observed in the impugned award by the Tribunal the age of the deceased was 31 years, 3 months and 17 days on the date of accident as his birth date suggested from Exh.43 is 1-6-1968. Looking to the age of 31 years the Tribunal has adopted 17 years purchase factor. We do not find any illegality having been committed by the Tribunal in adopting 17 years purchase factor, looking to the age of the deceased of 31 years 3 months and 17 days on the date of accident.

8. The Tribunal in the impugned award has worked out loss of dependency amount deducting 1/4 th. amount which the deceased would have spent on himself. Mr. P.V. Nanavati, for the appellant contends that deduction of 1/4th amount is not legal in as much as in the case of GENERAL MANAGER, KERELA STATE ROAD TRANSPORT CORPORATION, TRIVANDRUM VS. MRS. SUSAMMA THOMAS AND OTHERS, AIR 1994 SC 1631, it is contended that the deduction of 1/4th amount is illegal and that 1/3rd amount being personal expenses could have been deducted for the purpose of arriving at the loss of dependency benefit. In the case of General Manager, Kerala State Road Transport Corporation (supra) while considering the question of loss of dependency benefit in a case where the deceased had left behind parents, widow, and children deducted 1/3 rd. amount for personal living expenses and arrived at the loss of dependency benefit.

In the instant case deceased has died living behind parents, widow and three minor children. Mr. Hakim for the respondents-claimants has stated that the impugned award be modified to the extent that instead of 1/4 th. amount, 1/3rd. amount be deducted for personal living expenses for the purpose of working out loss of dependency benefit.

9. In view of the above, the appeal would be required to be partly allowed to the extent that 1/3 rd. amount would be required to be deducted for personal living expenses for the purpose of computing loss of dependency benefit, and thus deducting 1/3rd. amount from the prospective income of the deceased, the loss of dependency would be worked out at Rs.10,69,980-00 (Rs. Ten lakh sixty nine thousand nine hundred eighty only), instead of Rs.12,36,600/- as worked out by the Claims Tribunal.

The rest of the award does not call for any interference as regards other claims are concerned.

10. In the result the appeal is partly allowed. The impugned award is modified to the extent that the claimants would be entitled to Rs.10,69,980-00 by way of dependency benefit, instead of Rs.12,36,600-00. The impugned award has been modified accordingly. Rest of the award is confirmed. Appeal disposed of accordingly.

11. In view of the order passed in main appeal, no order is necessitated in civil application No. 1570 of 2003 and accordingly, civil application disposed of.

Rule discharged.

Dt: 8-5-2003

(N.G. Nandi, J)

(M.S. Shah, J)

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